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*Optus Mobile Pty Ltd v  
Central Coast Council* [2025]  
NSWLEC 74

**OPTUS MOBILE PTY LTD V CENTRAL COAST COUNCIL  
[2025] NSWLEC 74**

The decision concerns an application for joinder made in class 1 proceedings in the Land and Environment Court (**Court**) in which Optus Mobile Pty Ltd (**Optus**) appealed against Central Coast Council's (**Council**) refusal of its development application for a telecommunications tower.

The joinder application was made by the owner of neighboring land.

The neighbour was successful in his application and was joined as a party to the proceedings.

The Court considered whether the existence of a commercial agreement (in this case a lease over the development site) between Council and Optus was a relevant consideration in determining a joinder application in class 1 proceedings under section 8.15(2) of the *Environmental Planning and Assessment Act 1979* (**EPA Act**).

While each joinder application will need to be considered in its specific factual context, the decision highlights that the existence of a commercial arrangement between a Council and development proponent may be a relevant consideration in an application for joinder, and, subject to the specific circumstances of the case, a person may be more readily joined where there is such an arrangement.

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The above are summaries only. They are not intended to take the place of legal advice.

The background to this matter was as follows:

- The Applicant for joinder owned the land adjoining the proposed site of the telecommunications tower.

The Council owned the development site and had entered into a series of leases with Optus over the land, expiring in 2041.

- Optus had a right to terminate the leases if a development application was not granted for the tower.
- In its statement of facts and contentions, Council raised several grounds for the refusal of the development application, which were described by the Court as 'significant' and 'complex'. The contentions included the visual impact of the development on the joinder applicant's land.
- There are two alternative grounds for joinder under s 8.15(2) of the *EPA Act*, as follows:
  - the person is able to raise an issue that should be considered in relation to the appeal but would not be likely to be sufficiently addressed if the person were not joined as a party; or
  - it is in the interests of justice or the public interest to order that the person be joined.
- In the application for joinder, the neighbour relied on both of the above grounds.
- The neighbour argued that the leases gave rise to a 'conflict of interest' and meant that the Council might not adequately address all of the relevant issues in its defence of the appeal, as it had a financial interest in the approval of the development application.
- In determining to order that the neighbour be joined as a party – on the basis of the interests of justice and public interest, the Court reasoned as follows:
  1. No finding could be made that the Council would not properly address the merits of the DA and the Appeal simply because it had entered into lease agreements with Optus.
  2. The merits issues were likely to be 'sufficiently addressed', even if the neighbour were not joined.
  3. While ordinarily the court would not order joinder on the basis of 'the public interest' or the 'interests of justice' in circumstances where the issues will be sufficiently addressed without joinder (applying *Morrison Design Partnership Pty Ltd v North Sydney Council and Director General of the Department of Planning* (2007) 159 LGERA 361; [2007] NSWLEC 802), the particular circumstances of the appeal made joinder appropriate in the 'interests of justice' and the 'public interest'.
  4. The existence of the leases was a relevant factor in the consideration of

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the interests of justice and the public interest, and the concepts of fairness, impartiality and integrity might be caught within the meaning of the phrase 'the interests of justice'.

5. While the existence of the leases, in isolation, would not warrant joinder based on the interests of justice or the public interest, when considered in the context of the numerous and complex merit issues, and the fact that the neighbour's land would be most affected by the proposed development, joinder was warranted on those grounds.

It is common for local councils to exercise the dual functions as landowner and consent authority and to enter leases or other commercial agreements with persons who wish to carry out development on council owned land.

While each joinder application will be considered in the specific factual circumstances, this decision highlights that the existence of such commercial arrangements can be relied upon by an intervener in support of an application for joinder. This is notwithstanding that the issues would otherwise be sufficiently addressed even if the person were not joined.

**For more information about this update, please contact Tom Ward.**

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